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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,690	03/29/2004	J. Christopher Marmo	D-4109	1370
66597	7590	12/05/2007		
COOPERVISION, INC. GREG S. HOLLRIGEL 21062 BAKE PARKWAY SUITE 100 LAKE FOREST, CA 92630			EXAMINER NUTTER, NATHAN M	
			ART UNIT 1796	PAPER NUMBER
			MAIL DATE 12/05/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/811,690	Applicant(s) MARMO, J. CHRISTOPHER	
	Examiner Nathan M. Nutter	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 172-178 and 186 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 172-178 and 186 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of the species "polyalkylene glycol" in the reply filed on 21 November 2007 is acknowledged. Applicant cancelled all non-elected claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 172-178 and 186 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hu et al (US 2001/0044482), Gordon (US 4,123,408), or Shah (US 4,462,665) each taken in view of Dziabo et al (US 5,338,408) and Krezanoski et al (US 3,954,644).

The reference to Hu et al (US 2001/0044482) shows the contemplated contact lens employed in the instant claims at the Abstract, paragraphs [0017]-[0019], [0022], [0029], [0032]-[0035], [0047]-[0048], [0051] and the many Examples.

The reference to Gordon (US 4,123,408) shows the contemplated contact lens employed in the instant claims at the Abstract, column 2 (lines 38-55), column 3 (line 64) to column 6 (line 63), the Example at columns 8 and 9 and the claims.

The reference to Shah (US 4,462,665) shows the contemplated contact lens employed in the instant claims at the Abstract, column 2 (line 1) to column 4 (line 49), the many Examples and the claims.

Each of the references to Dziabo et al (US 5,338,408) and Krezanoski et al (US 3,954,644) show the storage and cleaning of contact lenses using polymers, as herein recited and claimed. Note in Dziabo et al at the paragraph bridging column 5 to column 6) for the use of polymers derived from vinyl ethers. Note column 2 (lines 35-63). The patent to Krezanoski et al shows the use of vinyl ethers for storage and cleaning of contact lenses. Note the Abstract.

The primary references teach the contact lens of the claims. The secondary references show the solutions for cleaning/storage and show such as conventional, as recited herein. The employment of a package is notoriously obvious since the product must be vended and distributed. As such, a skilled artisan would have a high level of expectation of success following the teachings of the references. Nothing unexpected is shown on the record. The recitation of "single use" provides no patentable distinction since it is intended to be used at least once. The recitation and the claim language of "comprising" does not exclude the use of the lens a multiple number of times, or that a multi-use lens may not be included in the "package system" recited. Likewise, it is a hoary employment of sterile packaging for contact lenses, to do otherwise would be detrimental and harmful. Again, applicant has failed to show any unexpected or surprising results.

Claims 172-178 and 186 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al (US 6,008,170) or Salpekar et al (US 6,440,366), each taken in view of Dziabo et al (US 5,338,408) and Krezanoski et al (US 3,954,644).

The reference to Tanaka et al (US 6,008,170) shows the contemplated contact lens employed in the instant claims at the Abstract, the paragraph bridging column 3 to column 4, column 6 (lines 45-61), the Examples and claims.

The reference to Salpekar et al (US 6,440,366) shows the contemplated contact lens employed in the instant claims at the Abstract, column 3 (line 53) to column 7 (line 57), the Examples and the claims.

Each of the references to Dziabo et al (US 5,338,408) and Krezanoski et al (US 3,954,644) show the storage and cleaning of contact lenses using polymers, as herein recited and claimed. Note in Dziabo et al at the paragraph bridging column 5 to column 6) for the use of polymers derived from vinyl ethers. The patent to Krezanoski et al shows the use of vinyl ethers for storage and cleaning of contact lenses. Note the Abstract.

The primary references teach the contact lens of the claims. The secondary references show the solutions for cleaning/storage and show such as conventional, as recited herein. The employment of a package is notoriously obvious since the product must be vended and distributed. As such, a skilled artisan would have a high level of expectation of success following the teachings of the references. Nothing unexpected is shown on the record. The recitation of "single use" provides no patentable distinction since it is intended to be used at least once. The recitation and the claim language of

"comprising" does not exclude the use of the lens a multiple number of times, or that a multi-use lens may not be included in the "package system" recited. Likewise, it is a hoary employment of sterile packaging for contact lenses, to do otherwise would be detrimental and harmful. Again, applicant has failed to show any unexpected or surprising results.

### ***Response to Arguments***

Applicant's arguments filed 21 November 2007 have been fully considered but they are not persuasive.

Applicant argues that a prima facie case of obviousness has not been tendered by the Examiner. This is not so. The references show all of the parameters recited in the instant claims that are not notoriously known to those of ordinary skill in the art. The references employ each of the constituents/components in identical fashion as recited herein. The argument that "the cited references taken alone or in any combination do not teach or suggest a package system as recited in any of (the) independent claims," and the cited references taken alone or in any combination do not teach or suggest contact lens package systems that include the recited contact lens, the recited sterile packaging liquid medium, wherein both the contact lens and the sterile packaging liquid medium comprise...a polyalkylene glycol" ignores the teachings of the references, as set out above. The references in combination teach all of the elements of the claims and produce predictable results. A finite number of constituents are disclosed in the references for employ. Commercially available for many years, solutions suitable for

cleaning and storage (in the same bottle) are notoriously old in the art. With regard to "single use," see the rejections above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

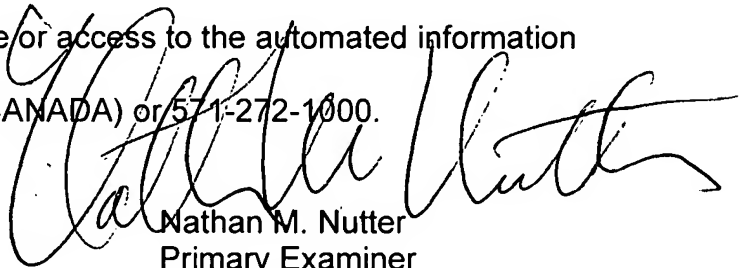
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Nathan M. Nutter  
Primary Examiner  
Art Unit 1796

nmn

30 November 2007